

**BEFORE THE ARIZONA MEDICAL BOARD**

In the Matter of

**Case No. MD-14-0230A**

**MARK R. AUSTEIN, M.D.**

**INTERIM CONSENT AGREEMENT  
FOR PRACTICE LIMITATION AND  
ASSESSMENT**

Holder of License No. **14196**  
For the Practice of Allopathic Medicine  
In the State of Arizona.

**(Non-Disciplinary)**

**INTERIM CONSENT AGREEMENT**

Mark R. Austein, M.D. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Interim Consent Agreement for Practice Limitation and Assessment; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

**INTERIM FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Physician is the holder of License No. 14196 for the practice of allopathic medicine in the State of Arizona.

3. On or about June 23, 2015, the Board received a report regarding the results of an inpatient chemical dependency relapse evaluation completed by Respondent. Specifically, the report indicated that Respondent may have a health condition that has the potential to place patients and the public at risk. Based on this report, the Board's Physician Health Program Contractor, Greenberg and Sucher, P.C., ("PHP Contractor") performed a post-evaluation reassessment and issued a report with recommendations regarding Respondent's safety to practice, including among other terms and conditions, participating in PHP for a period of five years.

1           4.       The aforementioned information was presented to the investigative staff, the  
2 medical consultant and the lead Board member. All reviewed the information and concur  
3 that an interim consent agreement to limit Respondent's practice is appropriate.

4                                   **INTERIM CONCLUSIONS OF LAW**

5           1.       The Board possesses jurisdiction over the subject matter hereof and over  
6 Respondent.

7           2.       Pursuant to A.A.C. R4-16-509, the executive director has the authority to  
8 enter into consent agreements to limit a physician's practice if there is evidence that he is  
9 mentally unable to safely engage in the practice of medicine and the investigative staff, the  
10 medical consultant and the lead Board member concur after a review of the case that a  
11 consent agreement is appropriate.

12          3.       In addition, pursuant to A.R.S. §§ 32-1405(C)(25) and 32-1451(F), the  
13 Executive Director, on behalf of the Board, has the authority to enter into consent  
14 agreements if there is evidence of danger to the public health and safety.

15                                   **INTERIM ORDER**

16           IT IS HEREBY ORDERED THAT:

17          1.       Respondent is prohibited from engaging in the practice of medicine in the  
18 State of Arizona as set forth in A.R.S. § 32-1401(22) until he applies to the Board and  
19 receives its affirmative permission to do so. Respondent may not apply for relief from this  
20 Interim Consent Agreement until he has complied with the recommendations of the PHP  
21 Contractor and the Board is in receipt of confirmation from PHP that Respondent is safe to  
22 practice. The PHP confirmation must specifically address Respondent's ability to safely  
23 and competently practice medicine.

24          2.       Respondent is responsible for all expenses relating to the PHP Contractor's  
25 recommendations.

3. The PHP is a representative of the Board and, as such, failure to comply with any aspect of the recommendations is considered an act of unprofessional conduct under the Medical Practice Act. A.R.S. § 32-1401(27)(dd). It is also an act of unprofessional conduct to violate or attempt to violate a Board Order. A.R.S. § 32-1401(27)(r).

4. Once all of the requirements set forth in paragraph one have been met, Respondent may request, in writing, release and/or modification from this Interim Consent Agreement. The Board has the sole discretion to determine whether it is appropriate to release Respondent from this Interim Consent Agreement and enter a final disposition in this matter or take any other action that is consistent with its statutory and regulatory authority.

5. This Interim Consent Agreement is not a final decision by the Board regarding the pending investigative file and as such is subject to further consideration by the Board. In addition, the Board retains jurisdiction and may initiate a separate disciplinary action based on the facts and circumstances that form the basis for this practice limitation or any violation of this Interim Consent Agreement.

DATED this 10<sup>th</sup> day of July, 2015.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley  
Patricia E. McSorley  
Executive Director

### **CONSENT TO ENTRY OF ORDER**

1           1.     The Board, through its Executive Director, may adopt this Interim Consent  
2 Agreement, or any part thereof, pursuant to A.R.S. §§ 32-1405(C)(25) and 32-1451(F) and  
3 A.A.C. R4-16-509.

4           2.     Respondent has read and understands this Interim Consent Agreement for  
5 Practice Limitation as set forth herein, and has had had the opportunity to discuss this  
6 Interim Consent Agreement with an attorney or has waived the opportunity to discuss this  
7 Interim Consent Agreement with an attorney. Respondent voluntarily enters into this  
8 Interim Consent Agreement and by doing so agrees to abide by all of its terms and  
9 conditions.

10          3.     Respondent acknowledges and agrees that this Interim Consent Agreement  
11 is entered into freely and voluntarily and that no promise was made or coercion used to  
12 induce such entry.

13          4.     By entering into this Interim Consent Agreement, Respondent freely and  
14 voluntarily relinquishes any rights to an administrative hearing on the matters set forth  
15 herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or  
16 any other administrative and/or judicial action, concerning the matters related to this  
17 Interim Consent Agreement

18          5.     Respondent understands that this Interim Consent Agreement does not  
19 constitute a dismissal or resolution of this matter or any matters that may be currently  
20 pending before the Board and does not constitute any waiver, express or implied, of the  
21 Board's statutory authority or jurisdiction regarding any other pending or future  
22 investigations, actions, or proceedings. Respondent also understands that acceptance of  
23 this Interim Consent Agreement does not preclude any other agency, subdivision, or  
24 officer of this State from instituting civil or criminal proceedings with respect to the conduct  
25 that is the subject of this Interim Consent Agreement. Respondent further does not

1 relinquish his rights to an administrative hearing, rehearing, review, reconsideration,  
2 judicial review or any other administrative and/or judicial action, concerning the matters  
3 related to a final disposition of this matter, unless he affirmatively does so as part of the  
4 final resolution of this matter.

5         6.       Respondent understands that this Interim Consent Agreement shall not  
6 become effective unless and until it is approved and signed by the Board's Executive  
7 Director.

8         7.       Respondent understands and agrees that if the Board's Executive Director  
9 does not adopt this Interim Consent Agreement, he will not assert in any future  
10 proceedings that the Board's consideration of this Interim Consent Agreement constitutes  
11 bias, prejudice, prejudgment, or other similar defense.

12        8.       All admissions made by Respondent are solely for final disposition of this  
13 matter and any subsequent related administrative proceedings or civil litigation involving  
14 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
15 or made for any other use, such as in the context of another state or federal government  
16 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
17 any other state or federal court.

18        9.       Upon signing this Interim Consent Agreement, and returning this document  
19 (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the  
20 consent to the entry of the Interim Consent Agreement. Respondent may not make any  
21 modifications to the document. Any modifications to this original document are ineffective  
22 and void unless mutually approved by the parties in writing.

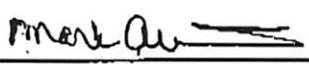
23        10.      This Interim Consent Agreement is a public record that will be publicly  
24 disseminated as a formal ***non-disciplinary*** action of the Board.

1 11. If any part of the Interim Consent Agreement is later declared void or  
2 otherwise unenforceable, the remainder of the Interim Consent Agreement in its entirety  
3 shall remain in force and effect.

4 12. Respondent understands that this Interim Consent Agreement does not  
5 alleviate his responsibility to comply with the applicable license-renewal statutes and rules.  
6 If this Interim Consent Agreement remains in effect at the time Respondent's allopathic  
7 medical license comes up for renewal, he must renew his license if Respondent wishes to  
8 retain his license. If Respondent elects not to renew his license as prescribed by statute  
9 and rule, Respondent's license will not expire but rather, by operation of law (A.R.S. § 32-  
10 3202), become suspended until the Board takes final action in this matter. Once the  
11 Board takes final action, in order for Respondent to be licensed in the future, he must  
12 submit a new application for licensure and meet all of the requirements set forth in the  
13 statutes and rules at that time.

14 13. Respondent understands that any violation of this Interim Consent  
15 Agreement constitutes unprofessional conduct and may result in disciplinary action.  
16 A.R.S. §§ 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or  
17 stipulation issued or entered into by the board or its executive director under this chapter.")  
18 and 32-1451.

19 14. ***Respondent has read and understands the terms of this Interim***  
20 ***Consent Agreement.***

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22 \_\_\_\_\_  
23 MARK R. AUSTEIN, M.D.

DATED: 7-9-15

24 EXECUTED COPY of the foregoing e-mailed  
25 this 10<sup>th</sup> day of July, 2015 to:

1 David E. Hill  
2 Law Office of David Hill, PLC  
3 300 N. Main Avenue, Suite 102  
4 Tucson , Arizona 85701  
5 Attorney for Respondent

6 Greenberg and Sucher, P.C.  
7 Address of Record

8 ORIGINAL of the foregoing filed  
9 this 10<sup>th</sup> day of July, 2015 with:

10 Arizona Medical Board  
11 9545 E. Doubletree Ranch Road  
12 Scottsdale, AZ 85258

13 Mary Bolrey  
14 Arizona Medical Board Staff  
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